

Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational Requirements

PROPOSED AMENDMENT

7 CSR 60-2.040 Responsibilities of Authorized Service Providers. The Missouri Highways and Transportation Commission is amending section (1).

PURPOSE: This proposed amendment outlines the responsibilities of breath alcohol ignition interlock device authorized service providers.

[PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.]

(1) Responsibilities of Authorized Service Providers.

(A) The responsibilities of a breath alcohol ignition interlock device authorized service provider to the state of Missouri shall include:

1. The authorized service provider shall carry product liability insurance with minimum liability limits of one (1) million dollars per occurrence and three (3) million dollars aggregate total. The liability insurance shall include coverage for defects in product design and materials as well as manufacturing, calibration, installation, and removal of devices. The authorized service provider shall ensure that its installers are named additional insureds or that its installers carry like insurance in the amounts stated herein. The proof of insurance shall include a statement from the insurance company that thirty (30) days' notice will be given to the director, Traffic and Highway Safety Division, before cancellation of the insurance. Proof of insurance must be submitted to the Missouri Department of Transportation, Traffic and Highway Safety Division within thirty (30) days after a Letter of Certification has been issued. Failure to provide certificate of insurance may result in suspension or revocation of approval for the device;

2. The authorized service provider shall indemnify and hold harmless the state of Missouri and its officers, employees, and agents from all claims, demands, actions, and costs whatsoever which may arise, directly or indirectly, out of any act or omission by the authorized service provider or its installers relating to the installation, service, repair, use, or removal of a device;

3. The authorized service provider shall provide expert or other required testimony in any civil or criminal proceedings or administrative hearings as to the method of manufacture of the device, how said device functions, the testing protocol by which the device was evaluated for approval, and interpretation of any report or information recorded in the data storage system of the device. Failure to provide testimony may result in suspension or revocation of approval for the device;

4. *[Before May 8, 2014, the authorized service provider shall notify the Missouri Department of Transportation, Traffic and Highway Safety Division in writing of any material modification or alteration in the components, design, or installation and operating instructions of any device*

*approved for use in the state of Missouri and shall provide the Traffic and Highway Safety Division satisfactory proof that any modifications or alterations do not adversely affect the ability of the device to satisfy the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR 11772–11787 (April 7, 1992), which is incorporated by reference and made a part of this rule as published in the Federal Register by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective April 7, 1992. This rule does not incorporate any subsequent amendments or additions to this publication. Also, on and after May 8, 2014, t]*The authorized service provider shall notify the Missouri Department of Transportation, Traffic and Highway Safety Division in writing of any material modification or alteration in the components, design, or installation and operating instructions of any device approved for use in the state of Missouri and shall provide the Traffic and Highway Safety Division satisfactory proof that any modifications or alterations do not adversely affect the ability of the device to satisfy the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 78 FR 26849-26867 as published in the *Federal Register* on May 8, 2013 by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and *[that shall become]effective [beginning on]*May 8, 2014, which is hereby incorporated by reference and made a part of this rule. This paragraph does not incorporate any subsequent amendments or additions to this publication;

5. The authorized service provider must provide informational materials to the Division of Probation and Parole, the circuit courts (including circuit, associate, and municipal divisions), and the Department of Revenue for distribution to operators at no cost;

6. In cases of operator noncompliance, the authorized service provider or his/her installer must notify the appropriate court-ordered supervising authority before the end of the next working day. Noncompliance shall include tampering, circumvention, violations resets, high breath alcohol concentration (BrAC), missing a scheduled service date, or other noncompliance as determined by the referring court;

7. The authorized service provider shall notify the appropriate court-ordered supervising authority by the end of the next working day of removal of a device;

8. The authorized service provider, installation site, and service center shall conduct physical tamper inspections any time the device is serviced or given routine inspection, maintenance, or repair. Tamper inspections shall include the following:

A. Inspection of all external wiring, insulation, connections, tamper seals, and sheathing for the device and where the device connects to the vehicle; and

B. Checking the device for proper operation to ensure tamper detection capabilities;

9. The authorized service provider must immediately notify the chief law enforcement official of the county, or a city not within a county, where the installer is located, and the court-ordered supervising authority of any evidence of tampering with or circumvention of the device. The evidence must be preserved by the authorized service provider or his/her installer until otherwise notified by local law enforcement officials;

10. The authorized service provider must provide summary reports every thirty (30) days to the court-ordered supervising authority. The summary reports must contain a summary of violations, the number of starts, and all noncompliance on devices placed in service in the state of Missouri under sections 577.600, **577.605, 577.612, and [–577.614]302.440-302.462**, RSMo;

11. The authorized service provider must provide to the court-ordered supervising authority additional reports, to include, but not be limited to, records of installation, calibrations, maintenance checks, and usage records on devices placed in service in the state of Missouri under sections 577.600, **577.605, 577.612, and** ~~[-577.614]~~**302.440-302.462**, RSMo. These records shall be agreed upon and transmitted using electronic transfer protocols or in hard copy;

12. The authorized service provider must provide a quarterly status report to the Missouri Department of Transportation, Traffic and Highway Safety Division. The first quarter of each year shall be January 1 through March 31. The quarterly reports should reach the Traffic and Highway Safety Division on or before the fifteenth of the month immediately following the end of the quarter. The reports shall be filed electronically and contain the following information: the name of the ignition interlock device, total number of devices in operation in Missouri each quarter at the time of reporting, total number of devices installed during the quarter, total number of voluntary installations during the quarter, total number of devices removed during the quarter, total number of breath tests, total number of breath alcohol tests resulting in a **B rAC at or** above the alcohol setpoint, total number of attempts to circumvent the device as defined in 7 CSR 60-2.010, total number of vehicle starts, total number of miles driven, and the total number of devices that malfunctioned or were defective;

13. The authorized service provider shall grant the state of Missouri, or an agent of the state, the right to inspect or request copies of any and all operator files and records on a random basis at no cost;

14. The authorized service provider shall supply for each ignition interlock device installed as a result of a Missouri ignition interlock requirement a warning label **as required in 302.460, RSMo**, *[which shall not be less than one-half inch (1/2") in height by three inches (3") in length and shall]*containing the following language: "WARNING! ANY PERSON TAMPERING, CIRCUMVENTING OR OTHERWISE MISUSING THIS DEVICE IS GUILTY OF A CLASS A MISDEMEANOR.";

15. The authorized service provider must notify the Traffic and Highway Safety Division electronically of changes in the status of any installer and additions or deletions or other changes to its complete listing of all installers that includes the name, location, phone number, and contact name. Such notification shall occur at least once per month and shall occur more frequently if additional changes are made;

16. Data downloaded from an ignition interlock device shall be—

A. Reviewed by the authorized service provider for any evidence of violations reset, tampering, and/or circumvention as defined in 7 CSR 60-2.010 for the designated monitoring period; and

B. All information obtained as a result of each calibration or inspection must be retained by the authorized service provider for three (3) years from the date the ignition interlock device is removed from the vehicle;

17. The authorized service provider shall electronically notify the Department of Revenue in a format as determined by the director of revenue within one (1) working day of the following:

A. The date the ignition interlock device was installed;

B. A service lockout condition;

C. The date the ignition interlock device was removed; and

D. The completion of the designated monitoring period of ignition interlock use by the driver with no violation resets, tampering, and/or circumventions as defined in 7 CSR 60-2.010;

18. Each installation site and service center must maintain records documenting all

calibrations, downloads, and any other services performed on an ignition interlock device, including service of a violation reset; and

19. Retention of the record of installation, calibrations, downloads, service, and associated invoices must be maintained for a minimum of three (3) years **from the date the device is removed from the vehicle**.

(B) The responsibilities of an authorized service provider to the operator shall include:

1. Written instructions on how to clean and care for the device;
2. Written instructions on what type of vehicle malfunctions or repairs may affect the device, and what to do when such repairs are necessary;
3. Written and hands-on training for the operator, and all persons who will use the vehicle, on how to use the device after it is installed in the operator's vehicle. Training shall include operation, maintenance, and safeguards against improper operations;
4. A twenty-four- (24-) hour toll-free telephone number that the operator may contact to receive assistance in the event of device failure or vehicle problems related to the interlock device. Calls must either be answered by an ignition interlock technician qualified to service the manufacturer's ignition interlock device, or the call must be returned by a qualified technician within thirty (30) minutes of the original call.

A. Assistance shall include technical information, tow service, and/or road service.

B. Assistance related to the failure of a device should be provided within two (2) hours.

C. The device must be made functional within twenty-four (24) hours from when the call for assistance is made or the device must be replaced;

5. Restoration of the operator's vehicle to its original condition after removal of the breath alcohol ignition interlock device; and

6. Access to an enclosed building with a separate waiting area for operators. If installation is by a mobile unit, the operator must have a separate, enclosed waiting area available. **A mobile service center shall be part of a service center which has a fixed location within Missouri and shall comply with all the certification requirements herein, including operating within a 100 air-mile radius of the fixed location.**

(C) The responsibilities of an authorized service provider to the installer shall include:

1. Authorized service providers shall ensure that installers follow certified standards and specifications for service;

2. Authorized service providers shall ensure that installers have the appropriate skills, equipment, and facilities necessary to comply with all of the certification and operational requirements outlined herein; and

3. Authorized service providers shall ensure that installers comply with all of the reporting requirements outlined herein.

*AUTHORITY: sections 302.060, 302.304, 302.309, **302.440-302.462**, RSMo, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000.* This rule originally filed as 11 CSR 60-2.040. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.040, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expired Dec. 30, 2009. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Amended: Filed October 17, 2016.*

Original authority: 577.600–577.614, see **Missouri Revised Statutes and 226.130, RSMo 1939,*

amended 1993, 1995.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will affect the costs to private entities, including small businesses. The fiscal impact to ignition interlock manufacturers, distributors, and installers cannot be determined because it is impossible to predict if they will be able to meet the requirements and the number of new installations that this proposed amendment will impact. It also is difficult to determine the number of devices that will need to be switched to another device. Therefore, the dollar amount of the full impact of costs cannot be determined at this time, but is assumed that it will be more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pam Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*